

**CANADIAN HUMAN RIGHTS TRIBUNAL TRIBUNAL CANADIEN DES
DROITS DE LA PERSONNE**

LUCE BLONDIN

Complainant

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

PUROLATOR COURIER LTD.

Respondent

RULING ON AMENDMENT OF COMPLAINT

MEMBER: Athanasios D. Hadjis 2005 CHRT 7
2005/02/09

[1] The Complainant has made a motion to amend the complaint that she originally filed with the Canadian Human Rights Commission ("Commission") on January 12, 2003. The Complainant alleges in her complaint that her employer, the Respondent, discriminated against her because of her marital status, contrary to s. 7 of the *Act*. The Complainant's spouse, who also worked for the Respondent, was dismissed in November 2001. Her spouse later filed judicial proceedings contesting his dismissal. The Complainant contends that on June 12, 2002, the Respondent reduced her seniority rights because her spouse had sued the Respondent. The Commission referred her complaint to the Tribunal on August 19, 2004.

[2] On November 22, 2004, the Complainant wrote to the Tribunal Registry requesting that her complaint be amended to include an allegation that the Respondent had retaliated against her, in breach of s. 14.1 of the *Act*. She explained in her letter that since 2003, she has filed several complaints with the Respondent regarding a number of employment-related matters. She claims that the Respondent chose to not address any of these concerns, in reprisal against her for having filed a human rights complaint.

[3] On November 12, 2004, the Respondent dismissed the Complainant from her job. She alleges that she was fired in retaliation to her human rights complaint, noting that the Respondent's decision occurred only a few months after the Commission had referred her complaint to the Tribunal.

[4] The dismissal came shortly after the Complainant registered a protest with the Respondent, on October 25, 2004, concerning alleged misconduct by several other employees. The Respondent stated in its notice of dismissal to the Complainant that her accusations had been proven unfounded and defamatory, and were made with the sole intention of discrediting the employees in question. The Respondent deemed this conduct to be unacceptable and dismissed the Complainant without any further notice or delay.

[5] The Respondent contests the motion to amend the human rights complaint. The Respondent claims that the Complainant's new allegations are unfounded and that in any event, the question of the Complainant's dismissal is entirely unrelated to the human rights complaint. She was fired, it is argued, not because of her complaint but because she had been propagating defamatory comments about other employees within the

workplace. The Complainant contends that this explanation is merely a pretext, put forth so as to camouflage the Respondent's true intention: to free itself from the Complainant and her human rights complaint by dismissing her outright.

[6] As was pointed out in *Bressette v. Kettle and Stony Point First Nation Band Council*, 2004 CHRT 2 at para. 16, when assessing whether to grant a motion to amend a complaint, the Tribunal should not embark on a substantive review of the merits of the amendment. This should only be done in the fullness of the evidence after a full hearing. An amendment should be granted unless it is plain and obvious that the allegations set out therein could not possibly succeed.

[7] In the present case, it is not plain and obvious to me that the Complainant would be unable to establish that her dismissal was made in retaliation to her human rights complaint. Based on the allegations as presented, there is nothing to preclude the possibility of her demonstrating that retaliation constituted at least one of the factors in her dismissal.

[8] The Respondent disputes the Complainant's contention that the concerns she had raised prior to her dismissal were never addressed. The Respondent claims that to the contrary, many of these questions were dealt with either through the grievance process or by other means. The Respondent can certainly raise these points before the Tribunal inquiring into the merits of the human rights complaint, but they do not make it plain and obvious that the Complainant's amended allegations will not be substantiated.

[9] Similarly, the Respondent noted in its written submissions that a grievance has been filed on behalf of the Complainant contesting her dismissal, the outcome of which will determine if her dismissal was wrongful. The Respondent seemed to imply that all of the Complainant's concerns would be addressed in this fashion. However, it is far from certain that the grievance adjudicator will be making any findings as to whether s. 14.1 of the *Act* was infringed. It is not therefore plain and obvious that the Complainant will be prevented from establishing before the Tribunal that her allegations of reprisal are well founded.

[10] In its submissions, the Respondent referred to the Tribunal decision in *Uzoaba v. Canada (Correctional Service)* (1994), 26 C.H.R.R. D/361 (C.H.R.T.), aff'd (1995), 26 C.H.R.R. D/428 (F.C.T.D.). In that case, the Commission attempted to adduce evidence that dated as far back as twenty years prior to the date of the human rights complaint, and which related to incidents not specifically referred to in the complaint. The Tribunal concluded that given the passage of time and the understandably hazy recollection by witnesses of the events in question, it would have been unfair to admit this evidence. The Respondent argues that it would be similarly unfairly prejudiced if the scope of the present case was extended to include the allegations of retaliation.

[11] I am not persuaded by this argument. The situation in the present case is not in any way analogous to that described in *Uzoaba*. All of the incidents of retaliation alleged in the Complainant's amendment occurred after the filing of the complaint and if anything, witnesses will find it easier recalling these events than those relating to the existing complaint. Moreover, the matter at hand does not so much consist of enlarging the scope of the case, but rather including an additional allegation of discrimination that by definition is directly related to the existing human rights complaint. As was noted in *Bressette*, individuals should not be compelled to make allegations of reprisal or

retaliation arising after a complaint, by way of separate proceedings. It just makes common sense for all these allegations to come before the Tribunal at the same time.

[12] Furthermore, the progress of this case from referral to hearing is still in its early stages. The parties have yet to exchange their Statements of Particulars and provide disclosure, in accordance with the Tribunal's Rules of Procedure, nor has the date for the hearing itself been set. Consequently, I am satisfied that the Respondent will have adequate notice of the case it must meet and will not be prejudiced unfairly if the amendment is granted.

[13] The Complainant's motion to amend her original complaint to include an allegation of retaliation pursuant to s.14.1 of the *Act* is therefore granted.

"Signed by"_____

Athanasios D. Hadjis

OTTAWA, Ontario

February 9, 2005

PARTIES OF RECORD

TRIBUNAL FILE: T982/10204
STYLE OF CAUSE: Luce Blondin v. Purolator Courier Ltd.
February 9, 2005
RULING OF THE TRIBUNAL DATED:

APPEARANCES:

Luce Blondin	On her own behalf
Franois Lumbu	On behalf of the Canadian Human Rights Commission
Nicola Di Iorio	On behalf of the Respondent

